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FEDERAL COMMUNICATIONS COMMISSION
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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054

In the Matter of
Policies and Rules Implementing
the Telephone Disclosure and
Dispute Resolution Act

CC Docket No. 93-22
RM-7990

INITIAL COMMENTS OF THE
NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS

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Policies and Rules Concerning Implementation of the Telephone
Disclosure and Dispute Resolution Act

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Pursuant to Sections 1.415 and 1.419 of the Federal Communications Commission's ("FCC" or "Commission") Rules of Practice and Procedure, 47 C.F.R. Sections 1.415, 1.419 (1992), the National Association of Regulatory Utility Commissioners ("NARUC") respectfully submits the following initial comments addressing the Commission's "Notice of Proposed Rulemaking and "Notice of Inquiry ("NPRM"), adopted February 11, 1993 and released March 10, 1993, in the above captioned proceeding:

I. NARUC'S INTEREST

NARUC is a quasi-governmental nonprofit organization founded in 1889. Members include the governmental bodies engaged in the regulation of carriers and utilities from all fifty States, the District of Columbia, Puerto Rico, and the Virgin Islands. NARUC's mission is to improve the quality and effectiveness of public utility regulation in America. More specifically, the NARUC is composed of, inter alia, State and territorial officials charged with regulating telecommunications common carriers within their respective borders.

In that capacity, they must assure that those telecommunications services and facilities required by the public convenience and necessity are established, and that service is provided at rates that are just and reasonable. In conformance with these obligations, many of NARUC's member state's have instituted rules requiring, inter alia, blocking of audiotext service at no charge to the consumers. The FCC's proposed rules could affect the states' abilities to enforce these safeguards.

II. BACKGROUND

Nine Hundred service ("900" or "Audiotext" service) refers to a telecommunications service which allows a large number of callers to simultaneously access a single "900" prefix telephone number and which results in a charge to the calling party at a rate different from that charged for an ordinary long distance call. A similar service offered on a wholly intrastate basis is also available ("976 service"). While 900 service has been in existence for over a decade, it has only been within the last several years that competitive interactive services have been offered. Since January 1988, the FCC has received over 2,000 written complaints concerning 900 services. State Commissions also consistently receive complaints concerning both 900 services and the more limited 976 services. Both the Federal and State governments have taken action to respond to the swelling numbers of complaints concerning this service.¹

¹ See, e.g., the FCC's September 26, 1991 adopted "Report and Order", In the Matter of Policies and Rules Concerning Interstate 900 Telecommunications Services, CC Docket No. 91-65.


State commissions have enacted a number of regulations of such 900/976 services concerning, inter alia, blocking service, disconnection policy, program pricing, advertisement restrictions, program preambles, disclosures concerning services targeting children, and adult programming.²

Most recently, on October 28, 1992, President Bush signed into law the Telephone Disclosure and Dispute Resolution Act ("TDDRA"), Public Law 102-556 [H.R. 6191], 106 STAT. 4181, which discusses, inter alia, blocking requirements for more expansively defined "pay-per-call" services. That legislation requires both the FCC and the Federal Trade Commission ("FTC") to promulgate rules addressing 900 services. The FTC's "Notice of Proposed Rulemaking" ("FTC-NPRM"), in the proceeding titled "Proposed Telephone Disclosure Rule, FTC File No. R311001, was published in the Federal Register on March 10, 1993 [58 Fed. Reg. 13370]. The comment cycle on the FCC proceeding has already ended, although the agency will be holding a two day forum addressing the proposed rulemaking later this month.

² See, generally, "A NARUC OVERVIEW OF DIAL-IT 976 AND DIAL-IT 900", Edited by Karon Bauer, Published by the NARUC, at pages 1-11, (April 24, 1991). NARUC has also addressed this problem in several resolutions requesting FCC action on issues raised by abusive pay-per-call activity. See, NARUC's Resolution on Audiotext Services (February 27, 1991) NARUC Bulletin No. 9-1991 at page 4 (March 4, 1991), Resolution on Billing and Collection Abuses, (February 27, 1991) NARUC Bulletin No. 9-1991 at page 17 (March 4, 1991), Resolution On 900 Pay Per Call Service, (July 24, 1991) Reported NARUC Bulletin No. 31-1991, pages 9-11 (August 12, 1991), and Resolution on Pay Per Call Rules Clarification and Modification (July 26, 1992). For your information and use, the full texts of these resolutions are reproduced in Appendices A through D.

At least partially because of NARUC's activism before Congress and the FCC, almost all of NARUC's suggestions and positions on pay-per-call services have been incorporated in the text of the statute and the FCC's/FTC's proposed rules.³ Accordingly, there are only a few remaining issues raised by the FCC's NPRM that NARUC's resolutions address.

NARUC is pleased that Congress assured that the States would retain significant flexibility to enforce their own pay-per-call regulations, as well as portions of the Federal regulatory scheme, by including several protective provisions in the text of the



statute.⁴ In conformance with those provisions, NARUC respectfully suggests, that the FCC assure that States retain the authority to enact and enforce more strict, additional, complementary oversight and regulatory systems or procedures governing intrastate operations.

III. DISCUSSION

- A. **BLOCKING** - The FCC should assure the States retain maximum flexibility to enact and enforce additional and complementary blocking requirements.

Blocking is a service usually offered by a LEC to its subscribers which, when implemented, automatically prevents completion of a call to a specific prefix or area code (900, 700, 976, or any of the variations) from the subscriber's telephone. A more sophisticated form of blocking, not available in many areas, prevents completion of a call to a specified area code and a specified prefix.

The TDDRA requires the FCC to promulgate regulations assuring that LEC's, where technically feasible, offer subscribers the option of blocking access to all pay-per-call services. The blocks are to be offered at no charge to all subscribers for a period of 60 days after issuance of the FCC's pay-per-call regulations and within 60 days after taking new phone service. Also, where economically and technically feasible, the NPRM imposes an obligation to block only specific pay-per-call services.

⁴ See, e.g., TDDRA, Sec. 101(c)(2). 106 STAT. 4183; Sec. 101(g)(3) & (4), 106 STAT. 4186; Sec. 102, 106 STAT. 4190; and Sec. 302(a) & (b), 106 STAT. 4192.

As part of its inquiry, the FCC asks for comment on whether requirements for interstate blocking service obligations in FCC tariffs will unduly interfere with state regulatory systems, whether such a dual system is workable, and the degree to which the Commission should defer to state blocking requirements different from those imposed in the TDDRA. NPRM, para. 28, mimeo at 11-12.

NARUC generally supports imposition of the blocking requirements. However, as implied by the earlier discussion, NARUC believes that states must be given the flexibility to enact additional blocking requirements within their respective jurisdictions. At a minimum, it is clear that with respect to intrastate service, the TDDRA assures that the proposed FCC regulations do not preempt any "additional and complementary" state requirements unless it can demonstrate how those regulations impede enforcement of federal goals.⁵

⁵ See, TDDRA, Section 101(g)(2) & (4), which notes first that "...[n]othing in this section shall relieve any provider of pay-per-call services, common carrier, local exchange carrier, or any other person from the obligation to comply with any Federal, State or local statute or regulation relating to consumer protection or unfair trade.." and that "Nothing in this section shall preclude any State from enacting and enforcing additional and complementary oversight and regulatory systems or procedures, or both, so long as such systems and procedures govern intrastate services and do not significantly impede the enforcement of this section or other Federal Statutes."

However, the FCC should assure in its final order that states have the right to impose additional blocking requirements on other pay-per-call services.⁶

B. BILLING AND COLLECTION PROCEDURES - FCC should assure that states have maximum flexibility to impose additional and/or more stringent requirements.

On pages 14 - 16 of the mimeo, the NPRM discussion TDDRA billing and collection requirements. Generally, TDDRA requires any carrier providing billing and collection service to a pay-per-call service provider, to forgive charges or issue refunds when the FCC,, or the carrier, determines that the service has been offered in violation of federal law.

Again, as with the blocking procedures, NARUC urges the FCC to assure that states have maximum flexibility to impose additional and/or more stringent requirements. TDDRA references to these procedures and support for state authority are even more explicit.

⁶ As for the FCC's proposal to allow tariffing at the interstate level, NARUC has not taken a position. However, TDDRA Section 228(c)(4)(B), which merely states that carriers are not precluded from filing rates and regulations in their interstate tariffs, if read in pari materia with TDDRA Section 101(g)(2) & (4), [see footnote 5, supra], suggests that an FCC-mandate for inclusion of blocking rules in interstate tariffs is not what Congress intended. Moreover, as the FCC noted, based on the record, in its original 900 Service Report and Order, 6 FCC Rcd at 6176, the need for interstate "blocking" tariffs is unclear because, inter alia, the states have already made substantial progress in imposing blocking requirements.

Section 302 of the Act, 106 STAT. 4192, states as follows:

This title does not annul, alter, or affect, or exempt any person...from complying with, the laws of any State with respect to telephone billing practices, except to the extent that those laws are inconsistent with any provision of this title, and then only to the extent of the inconsistency."

Significantly, that section goes on to declare:

The Commission MAY NOT determine that any State Law is inconsistent with any provision of this chapter if the Commission determines that such law gives greater protection to the consumer." {Emphasis Added}

Accordingly, NARUC believes the TDDRA requires the FCC to give states additional flexibility to enact complementary or more stringent regulations concerning billing and collection practices.

IV. CONCLUSION

NARUC generally supports the FCC's efforts to eliminate consumer confusion the provision of 900 services. However, the FCC should not preempt more stringent state regulation of such services. NARUC respectfully requests that the Commission carefully examine and give effect to these comments.

Respectfully submitted,



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APPENDIX A

**NARUC'S FEBRUARY 27, 1991 RESOLUTION
REGULATION OF AUDIOTEXT SERVICES**

Regulation of Audiotext Services

WHEREAS, The development and application of the technology known as audiotext, has resulted in some audiotext businesses engaging in practices harmful to the public interest and/or contrary to accepted standards of business practices, and

WHEREAS, The House of Representatives has proposed H.R. 328 that would require the Federal Communications Commission (FCC) to initiate a rulemaking regarding audiotext services, and

WHEREAS The proposed legislation defines audiotext services

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In the Matter of
Policies and Rules Implementing the

Resolution on Billing and Collection Abuses

WHEREAS, An increasing number of incidents have been noted where information providers engaging in questionable marketing practices have used Local Exchange Carriers' interstate billing and collection services to collect monies that have been deceptively obtained from telephone customers. These abuses most often relate to 900 services. In a frequently encountered instance a customer will receive a card or telephone call telling them they have received a prize. They are then told to dial a "900" number to claim the prize. The prize usually has little monetary value and the charge for the call to the "900" number is very high; and

WHEREAS, A new scheme involving the use of interstate billing and collection services has recently surfaced. A marketer, who may also be a reseller or an Alternative Operator Services (AOS) company, will make a "collect" person-to-person call to a party and either tell them they have won a prize or want to talk to them about their "health." When they accept the call the caller will try and sell them something. Not only will the caller be subjected to the sales pitch but they are also billed for the collect person-to-person call. Often this call may also be billed at excessive rates; now, therefore be it

RESOLVED, That the Executive Committee of the National Association of Regulatory Utility Commissioners (NARUC), convened at its Winter Meeting, urges the Federal Communications Commission to institute a formal investigation, and to take the appropriate steps in the FCC forthcoming "900" rulemaking procedure to protect the consumer from these kinds of abuses, and to take any other appropriate action that will examine mechanisms that can be used to stop these and other 900-related abuses.

Sponsored by the Committee on Administration.

Adopted by NARUC's Executive Committee on February 27, 1991.

Reported in NARUC Bulletin No. 9-1991 at page 4 (March 4, 1991).

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APPENDIX C

NARUC'S JULY 24, 1991 RESOLUTION

900 PAY PER CALL SERVICE

**NARUC'S JULY 1991
Resolution On 900 Pay Per Call Service**

WHEREAS, Pay Per Call Information Service (900/976) generally refers to a telecommunications service which allows the simultaneous calling by large numbers of callers to a single "900/976" prefix telephone number and where the calling party is

- (2) After the preamble, a sufficient period of time to allow the caller to hang up before incurring a charge.
- (3) A cap on charges for programming targeted at children.
- (4) A specific complaint procedure and refund or "adjustment" policy should be in place for 900/976 services.
- (5) States should have the flexibility to promulgate terms and conditions for blocking 900/976 services.
- (6) Consider where technically feasible a separate prefix and selective blocking for programs which contain sexually explicit material that would be considered "harmful" to minors.
- (7) A customer's basic telephone service cannot be disconnected for nonpayment of 900/976 charges.
- (8) A local or toll free number for disputes or inquiries must be included on the customer's bill.
- (9) All advertisements and promotional materials must clearly and conspicuously identify all charges for the call.
- (10) Advertisements directed towards children must contain a statement that parental permission is required before calls are placed.
- (11) Provision of the name, address, and business phone number of an information provider by the carrier/billing agent at any customer's oral or written request, in a reasonable time and at no cost.
- (12) Disconnection of programs which do not comply with State and Federal requirements or which are found to be fraudulent; and be it further

RESOLVED, That NARUC Executive Committee opposes any Federal legislation or FCC rules that would preclude States from adopting additional safeguards and/or more stringent rules; and be it further

RESOLVED, That the NARUC General Counsel will file comments concerning NARUC's position on 900/976 service with the appropriate agencies or Congressional committees considering rules or bills and distribute this resolution to members for their consideration.

Sponsored by the Committee on Communications,
Adopted July 24, 1991 by the Executive Committee.
Reported NARUC Bulletin No. 31-1991, pages 9-11 (August 12, 1991).

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APPENDIX D

NARUC'S JULY 25, 1992 RESOLUTION

900 PAY PER CALL SERVICE

Resolution on Pay Per Call Rules Clarification and Modification

WHEREAS, Pay Per Call Information Services generally refer to a telecommunications service which allows the simultaneous calling by large numbers of end users to a single "900/976" prefixed telephone number and the calling party is charged for the call at a rate different from, and often higher than, that charged for ordinary long distance calls for goods and/or services; and

WHEREAS, The provision of pay per call service usually involves four parties: 1) the interexchange carrier (IXC) who provides tariffed transmission service and tariffed or non-tariffed billing and collection service; 2) the information provider (IP) or sponsor who provides the service, entertainment, information, or product and sets the price to the caller; 3) the local exchange carrier (LEC) who by contract or tariff provides billing and collection service from the IXC on behalf of the IP; and 4) the service bureau that takes service from the IXC on behalf of the IP;

WHEREAS, The Federal Communications Commission (FCC) has issued a notice of proposed rulemaking in CC Docket No. 91-65; and

WHEREAS, The 900 Subcommittee of the Consumer Protection Committee of the National Association of Attorneys General (NAAG) and thirty-four states filed a Petition for Clarification and Modification of the FCC's pay per call rules in Docket No. 91-65 on April 30, 1992; and

WHEREAS, The FCC released Public Notice on June 2, 1992 advising that the Petition would be treated as a petition for rulemaking rather than as a filing in CC Docket No. 91-65 and all comments and replies should refer to RM-7990; and

WHEREAS, There are pay per call information providers soliciting calls by the use of "free" 800 inward WATS lines whereby callers are then directed to 900 numbers or induced to continue calls to 900 numbers or to take some other action resulting in the caller being billed charges reflected in the form of a standard "900 number" charge from an IXC or a separate billing agent; and

WHEREAS, Certain of these 800 pay per call services are not complying with the FCC Pay Per Call Order (6 FCC Record 6166, October 23, 1991), and, in some instances, are using deceptive and misleading tactics to induce callers to complete the call resulting in a bill for the call, and the callers often remit charges because of confusion or concern that non-payment may threaten the availability of telephone service; and

WHEREAS, A number of states have responded to such circumstances by filing lawsuits against the specific service providers under their respective state consumer protection laws; and

WHEREAS, Thousands of businesses and government agencies regularly promote toll free 800 services, and therefore consumers equate 800 numbers with free service; and

WHEREAS, The use of 800 numbers for pay per call services circumvents the FCC's 900 number blocking provisions mandated in the Pay Per Call Order; now, therefore, be it

RESOLVED, By the National Association of Regulatory Utility Commissioners (NARUC), assembled at its summer committee meetings in Seattle, Washington, that it recommend that the FCC Order resulting from the Petition of the NAAG prohibit the practice of interstate carriers providing standard inward interstate services, such as, inward interstate WATS 800 number service, for customers that bill end users on a pay per call basis; and be it further

RESOLVED, That if the FCC allows inward interstate services to be used on a pay per call basis then the Pay Per Call Order should be clarified to state that the pay per call rules apply when such

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CERTIFICATE OF SERVICE

**I, JAMES BRADFORD RAMSAY, certify that a copy of the foregoing was
sent by first class United States mail, postage prepaid, to
all parties on the attached Service List.**



**James Bradford Ramsay
Deputy Assistant General Counsel**

**National Association of
Regulatory Utility Commissioners**

April 19, 1993

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